

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2000-093178

04/07/2003

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
M. Brady
Deputy

FILED: 04/10/2003

TIMOTHY IKE MCLELLAN

H MICHEAL WRIGHT

v.

ROBERT MAXWELL TURNER, et al.

CHRISTINE E MULLENEAUX

MINUTE ENTRY

9:46 a.m. This is the time set for oral argument re: motions in limine and evidentiary hearing. H. Michael Wright and Mark Bradshaw are present in person on behalf of the plaintiff. Christine Mulleneaux and Edythe Kelley are present on behalf of the defendants.

Court reporter, Lorraine Chalkey, is present.

After extended argument, the court orders as follows:

Plaintiff's motions in limine:

1. Denying motion for order directing defendant to pay expert witness deposition fee and to pay Dr. Immerman for doing research requested by defendants at the deposition.
2. Granting motion re: Dr. Immerman "scandal sheets" subject to another hearing to be requested by defense to cross examine on alleged "unprofessional conduct" or unless Dr. Immerman opens the door at trial (in the latter instance no prior hearing is necessary and the trial judge will rule whether the doctor has opened the door during his trial testimony).
3. Denying motion to preclude evidence of "other occupants".
4. Denying motion to limit testimony of Dr. Peles, Ph.D.
5. Denying motion to preclude testimony of Dr. Peles, Ph.D.

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6. Denying without prejudice plaintiff's motion for order directing expert witness to appear and charge reasonable fees (Dr. Thomas). The court believes it does have a duty to hold a telephonic hearing with the doctor and any office manager of the doctor in order to determine the reasonableness of the doctor's fees. This hearing will be set in the future and will be arranged by the parties consistent with this court's calendar.

Defendants' motions in limine:

7. Granting on stipulation motion to limit both plaintiff's and defendants' retained experts to one issue per expert but realizing that the one expert per issue rule does not apply to treating physicians (A.D.O.R.(189 Ariz. 49)).
8. Granting on stipulation motion to preclude mention of defendants' insurance and settlement negotiations.
9. In connection with defendants' motion to limit plaintiff's testimony at trial or alternatively for offer of proof (i.e. plaintiff complained of injury to a State Farm claims adjuster or employee or defendants' health provider prior to filing suit) the same should be determined by the trial judge who will be Judge Jarrett and accordingly this should be placed on Judge Jarrett's calendar by the parties prior to the trial.
10. Denying as moot motion to preclude Allen Immerman, D.C. from testifying for failure to give deposition.
11. Taking second motion to preclude Dr. Immerman (on the basis he does not have the expertise to give causation opinions) under advisement.
12. Taking under advisement motion for costs of deposing Maxwell Thomas, M.D. (because plaintiff misrepresented that he had causation opinions as an expert and he did not).

LATER:

After further consideration the court now denies defendants' second motion to preclude Dr. Immerman on the basis that the same goes to weight in the court's view.

IT IS FURTHER ORDERED granting, in part, defendants' motion for costs for deposing Maxwell Thomas, M.D. and ordering that plaintiff share one-half of costs of said deposition.